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Attorneys for Plaintiff  
Keep Rockin, LLC

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

KEEP ROCKIN, LLC, a Washington limited  
liability company,

Plaintiff,

v.

PIZZA ROCK LV, LLC, a Nevada limited  
liability company, and PIZZA ROCK, LLC, a  
California limited liability company,

Defendants.

Case No.: 2:13-cv-02205

**COMPLAINT  
(JURY DEMAND)**

For its complaint, Keep Rockin, LLC, alleges the following:

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a), because Plaintiff's trademark infringement and unfair competition claims arise under the laws of the United States, specifically, under the Lanham Act, 15 U.S.C. § 1114. This Court has supplemental jurisdiction over Plaintiff's common law claims.

2. This Court has personal jurisdiction over Defendant Pizza Rock LV, LLC, because it is a Nevada limited liability company and it conducts business in the State of Nevada including the operation of a pizza restaurant in Las Vegas, Nevada. This Court has personal jurisdiction over Defendant Pizza Rock, LLC, a California limited liability company, because, upon information and belief, it directs the infringing conduct of Defendant Pizza Rock, LV,

1 LLC, in Las Vegas, Nevada.

2 3. Venue is proper in the United States District Court for the District of Nevada  
3 under 28 U.S.C. § 1391(b)(2), because Defendants are engaged in trademark infringement in  
4 this district through the operation of a pizza restaurant. Venue is proper in the unofficial  
5 Southern division of this Court.

6 **PARTIES**

7 4. Plaintiff Keep Rockin', LLC is a Washington limited liability company with its  
8 principal place of business in Sumner, Washington.

9 5. Defendant Pizza Rock LV, LLC, is a Nevada limited liability company with its  
10 principal place of business in Las Vegas, Nevada.

11 6. Defendant Pizza Rock, LLC, is a California limited liability company with its  
12 principal place of business in Sacramento, California.

13 **ALLEGATIONS COMMON TO ALL COUNTS**

14 7. Keep Rockin' is the owner and franchisor of an interstate chain of pizza  
15 restaurants doing business under the trade name and trademark THE ROCK. The first THE  
16 ROCK pizza restaurant was opened in Tacoma, Washington, in 1995. Since that time, the chain  
17 has grown to seventeen (17) locations in Alaska, Colorado, Oregon, and Washington. Keep  
18 Rockin' is expecting to open additional locations in Alaska, California, Texas, and Washington  
19 in the next year and a total of forty (40) new locations by 2020. THE ROCK pizza's success has  
20 earned the company recognition as America's Number One Independently Owned Pizza Chain  
21 by *Pizza Today Magazine*.

22 8. Keep Rockin' has been continuously using THE ROCK mark for pizza  
23 restaurants since 1999. Keep Rockin' advertises, markets and promotes THE ROCK pizza  
24 restaurants through various media, including maintenance of a website at <TheRockWFP.com>.

25 9. Keep Rockin' owns several United States trademark registrations for THE ROCK  
26 mark for restaurant services, including: (a) THE ROCK word mark for restaurant services in  
27 International Class 43 (U.S. Reg. No. 3095500); (b) THE ROCK and design mark (shown  
28 below) for restaurant and bar services in International Class 43 (U.S. Reg. No. 3910910); and (c)

THE ROCK WOOD FIRED PIZZA AND BREWERY for restaurant services in International Class 43 (U.S. Reg. No. 2628701) (collectively, “THE ROCK Marks”). Keep Rockin’s registration for THE ROCK word mark is incontestable.



10. In addition, Keep Rockin’ owns a United States trademark registration (Reg. No. 3581930) for the distinctive trade dress of its restaurants, which combine rock and roll paraphernalia and concert tour memorabilia with metal and flame imagery.

11. Based on its federal trademark registrations and common law rights, Keep Rockin’ owns the exclusive right to use THE ROCK Marks and the associated trade dress for pizza restaurants. Keep Rockin’ has the right to stop others from using the same or confusingly similar marks for the same or related services in the United States.

12. In 2012, Keep Rockin’ learned of a “Pizza Rock” restaurant that opened Sacramento, California. The PIZZA ROCK and THE ROCK word marks are nearly identical in that the dominant term of both marks is the word “ROCK”. The term “pizza” is generic for the pizza restaurants and, therefore does not serve to distinguish the PIZZA ROCK mark from THE ROCK word mark.

13. Both parties use their mark with a flames motif as shown on the main exterior signs of the parties’ respective locations as shown below:



14. In addition, the parties offer similar services, namely, high-end pizza restaurants. Based on these and other factors, consumers are likely to be confused as the source or origin of their parties' services.

15. Accordingly, on May 16, 2012, counsel for Keep Rockin' sent a cease and desist letter to Defendant Pizza Rock demanding that it cease use of the PIZZA ROCK mark and any combination of branding imagery confusingly similar to Keep Rockin's protected trade dress.

16. On May 28, 2012, Pizza Rock, through counsel, summarily denied Keep Rockin's allegations and refused to comply with Keep Rockin's demands.

17. On May 30, 2012, Keep Rockin's counsel sent a follow-up demand letter and explained that Keep Rockin' had already received inquiries from two persons regarding an association between THE ROCK pizza restaurant and PIZZA ROCK restaurant.

18. On July 11, 2012, , through new counsel, Pizza Rock again denied Keep Rockin's allegations.

19. On July 20, 2012, Pizza Rock filed a federal trademark application for the mark PIZZA ROCK and design (shown below) for bar and restaurant services.



20. On August 6, 2012, Keep Rockin' again responded through counsel and objected to Pizza Rock's use of the PIZZA ROCK mark and its application to register the PIZZA ROCK mark in the United States Patent and Trademark Office ("USPTO").

21. On March 13, 2013, Pizza Rock's application for PIZZA ROCK was published for opposition by the USPTO.

22. On June 28, 2013, Keep Rockin' filed an opposition to registration of the PIZZA ROCK mark in the Trademark Trial and Appeal Board of the USPTO ("Opposition Proceeding"). The parties have been litigating the Opposition Proceeding since that time.

23. Keep Rockin' recently learned that, on or about October 17, 2013, Pizza Rock

1 opened a new PIZZA ROCK restaurant on 3<sup>rd</sup> Street in Las Vegas, Nevada.

2  
3 **COUNT I**  
4 **(Trademark Infringement under**  
5 **the Lanham Act, 15 U.S.C. § 1114(a))**

6 24. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set  
7 forth herein.

8 25. Defendants' use of the PIZZA ROCK mark constitutes a reproduction, copying,  
9 counterfeit, and colorable imitation of THE ROCK Marks in a manner that is likely to cause  
10 confusion or mistake or is likely to deceive consumers.

11 26. As a direct and proximate result of Defendants' infringement of THE ROCK  
12 Marks, Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to  
13 its business, reputation, and goodwill.

14 **COUNT II**  
15 **(Unfair Competition under**  
16 **the Lanham Act, 15 U.S.C. § 1125(a))**

17 27. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set  
18 forth herein.

19 28. Defendants' use of the PIZZA ROCK mark in commerce constitutes a false  
20 designation of origin which is likely to cause confusion, or to cause mistake, or to deceive as to  
21 the affiliation, connection, or association between Plaintiff and Defendant, or as to the origin,  
22 sponsorship, or approval of Defendants' services by Plaintiff.

23 29. As a direct and proximate result of Defendants' infringement unfair competition,  
24 Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to its  
25 business, reputation, and goodwill.

26 **COUNT III**  
27 **(Common law trademark infringement)**

28 30. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set  
forth herein.

31. Defendants' use of the PIZZA ROCK mark constitutes trademark infringement under common law.

32. As a direct and proximate result of Defendants' trademark infringement, Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

**COUNT IV**  
**(Common law unfair competition)**

33. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

34. Defendants' use of the PIZZA ROCK mark constitutes unfair competition under common law.

35. As a direct and proximate result of Defendants' unfair competition, Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to its business, reputation, and goodwill.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

A. A temporary, preliminary, and permanent injunction prohibiting the Defendants and their respective officers, agents, servants, employees, and/or all other persons acting in concert or participation with them, from using the PIZZA ROCK mark or any confusingly similar variations thereof, in connection with pizza restaurants, including, without limitation, at the current locations in Las Vegas, Nevada, and Sacramento, California.

B. An award of compensatory, consequential, statutory, and/or exemplary damages to Plaintiff in an amount to be determined at trial;

C. An award of interest, costs and attorneys' fees incurred by Plaintiff in prosecuting this action; and

D. All other relief to which Plaintiff is entitled.

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1  
2 Dated: this 27<sup>th</sup> day of November, 2013.

3 Respectfully submitted,

4 LEWIS ROCA ROTHGERBER LLP

5 By: /s/ Michael J. McCue

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